



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF MAY 14, 2001

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#01-47 Bird v. Saenz, S095474. (B134886; 86 Cal.App.4th 167.) Petition for review after the Court of Appeal reversed the summary judgment in a civil action. The court limited review to the issue of whether plaintiffs (daughters of the injured patient) can state a cause of action for negligent infliction of emotional distress against defendant physicians, when plaintiffs did not witness the alleged negligence during their mother's surgery but were present at the hospital and witnessed both the immediate effects of the alleged negligence on their mother and the hospital activity that occurred prior to their mother's return to surgery.

#01-48 Esberg v. Union Oil Co., S096524. (G022069; 87 Cal.App.4th 378.) Petition for review after the Court of Appeal affirmed a judgment notwithstanding the verdict in a civil action. This case concerns whether the Fair Employment and Housing Act (Gov. Code, § 12940 et seq.) bars discrimination on the basis of age with respect to "the conditions, terms, benefits and privileges of employment" and whether the common law tort of wrongful termination in violation of public policy extends to claims of alleged wrongful denial of "the conditions, terms, benefits and privileges of employment" on the basis of age.

(over)

#01-49 Silo v. CHW Medical Foundation, S095918. (C022895, C024033; 86 Cal.App.4th 947.) Petition for review after the Court of Appeal affirmed in part and reversed in part a judgment in a civil action. This case concerns whether the common law tort of wrongful termination in violation of public policy includes claims of religious discrimination in violation of article I, section 8, of the California Constitution where the employer was a religious entity statutorily exempt from the Fair Employment and Housing Act (Gov. Code, § 12940 et seq.), and, if so, whether a prevailing plaintiff is entitled to an award of attorney fees under Code of Civil Procedure section 1021.5.

#01-50 People v Valencia, S095385. (G023666; 86 Cal.App.4th 201.) Petition for review after the Court of Appeal modified and affirmed a judgment of conviction of criminal offenses. This case concerns whether removal of a window screen satisfies the entry element of burglary and whether it matters whether the window is open or closed.

#01-51 Whitmore Union Elementary School Dis. v. County of Shasta, S096088. (C031359; 87 Cal.App.4th 574.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the issues of (1) whether the Court of Appeal erred in declining to vacate the trial court judgment pursuant to the parties' stipulation (as part of a settlement of the action on appeal) without affording the parties an opportunity to brief the issue of the propriety of the stipulated reversal under Code of Civil Procedure section 128, subdivision (a)(8), and (2) whether a county treasurer has discretion to invest school district funds without the district's permission and without determining whether such funds are surplus funds of the district.

#01-52 Zuckerman v. Board of Chiropractic Examiners, S096127. (B135896.) Unpublished opinion. Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a proceeding for writ of administrative mandate. This case concerns the constitutionality of a regulation requiring a disciplined chiropractor to pay the reasonable costs of investigating and prosecuting the disciplinary proceeding.

#01-53 People v. Briscoe, S096191. (A089003.) Unpublished opinion. Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court ordered briefing deferred pending decision in People v. Mower, S094490 (#01-27), which includes the issue of whether the Compassionate Use Act

(Health & Saf. Code, § 11362.5) affords immunity from prosecution or creates an affirmative defense.

#01-54 People v. Nguyen, S095925. (E026808.) Unpublished opinion. Petition for review after the Court of Appeal affirmed an order of commitment as a sexually violent predator. The court ordered briefing deferred pending decision in People v. Torres, S079575 (#99-124), which concerns whether the finder of fact in a sexually violent predator proceeding must determine whether the prior acts were predatory.

#01-55 Souders v. Philip Morris Inc., S096570. (B141519; 87 Cal.App.4th 756.) Petition for review after the Court of Appeal reversed a judgment in a civil action. The court order briefing deferred pending decision in Myers v. Phillip Morris Companies, Inc., S095213 (#01-29), which concerns whether the amendments to Civil Code section 1714.45 that became effective on January 1, 1998, apply to a claim that accrued after January 1, 1998, but which is based on conduct that occurred prior to January 1, 1998.

#01-56 People v. Gay W., S096290. (E024913.) Unpublished opinion. Petition for review after the Court of Appeal affirmed judgments of conviction of criminal offenses. The court ordered briefing deferred pending decision in People v. Engelman, S086462 (#00-49), which presents issues concerning the effect of CALJIC No. 17.41.1 on a defendant's right to trial by jury.

DISPOSITIONS

#00-140 Kearney & O'Banion, Inc. v. State Comp. Ins. Fund, S091643, was transferred to the Court of Appeal for reconsideration in light of State Comp. Ins. Fund v. Superior Court, 24 Cal.4th 930.

#01-14 Loevner v. Internet Shopping Network, S093823, was dismissed and remanded to the Court of Appeal.

#99-202 People v. Williams, S083256, was transferred to the Court of Appeal for reconsideration in light of People v. Nguyen, 24 Cal.4th 756, People v. Jenkins, 22 Cal.4th 900, and People v. Howze, 85 Cal.App.4th 1380.

STATUS

#00-49 People v. Engelman, S086462. The court ordered briefing in this case, in which briefing was previously deferred pending decision in People v. Williams, S066106 (#98-21), and People v. Cleveland, S078537 (#99-94). The case presents issues concerning the effect of CALJIC No. 17.41.1 on a defendant's right to trial by jury.

In the following cases, in which briefing was previously deferred pending decision in People v. Williams, S066106 (#98-21), and People v. Cleveland, S078537 (#99-94), the court ordered briefing deferred pending decision in People v. Engelman, S086462 (#00-49):

#01-17 People v. Chavez, S093718.

#01-25 People v. Morgan, S094101.

#00-106 People v. Taylor, S088909.

#01-36 Equilon Enterprises v. Consumer Cause, Inc., S094877. The court limited review to the issue of whether, in order to obtain dismissal of an action under Code of Civil Procedure section 425.16, a defendant must show that the action was brought with the intent to chill the defendant's exercise of constitutional speech or petition rights.

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